

### REMARKS

Claims 1, 3, 4, 6-18, 21, 23, 24, 26-38, 41, 43, 44, 46-58, and 61-96 are pending in the application, with claims 1, 21, 41, 67, 77, and 87 being independent. Claims 2, 22, and 42 are cancelled by this response. Claims 1, 9, 10, 21, 29, 30, 41, 49, 50, and 65 are amended by this response. Applicant submits that the foregoing amendments do not present new issues. The amendments to claims 9, 10, 29, 30, 49, 50, and 65 correct clerical errors noted by the Examiner in his rejection of these claims under 35 USC 112. The amendments to independent claims 1, 21, and 41 incorporate the subject matter of dependent claims 2, 22, and 42, respectively. Reconsideration and allowance of Applicant's claims are respectfully requested in light of the following remarks.

### Objections To The Drawings

Applicant is submitting corrected figures with a supplemental response. The figures are believed to correct the informalities noted in the PTO-948 and, thereby, to obviate the Examiner's objections.

### Rejections Under 35 USC 112

The Examiner has rejected claims 9, 10, 29, 30, 49, 50, and 65 under 35 USC 112. Applicant submits that the foregoing amendments of these claims obviate these rejections.

### Rejections under 35 USC 102

The Examiner has rejected independent claims 1, 21, 41, 67, 77, and 87 under 35 USC 102(b) as anticipated by U.S. Patent No. 5,551,021 (Harada). Applicant respectfully requests that these rejections be withdrawn.

Independent claim 1 has been amended to incorporate the subject matter of dependent claim 2 and recites, in part, "providing a device with access to the merchant system, wherein the device is physically remote from the merchant's physical premises." Independent claims 21 and 41 recite similar features.

As conceded by the Examiner, Harada does not disclose at least these features. Office Action, Page 8, Lines 2-3 ("Harada does not specifically disclose and teach a method, wherein the device is physically remote from the merchant's physical premises."). Accordingly, Harada does not anticipate independent claims 1, 21, and 41, or the claims that depend from them.

With respect to independent claims 67, 77, and 87, the Examiner has not established a prima facie case of anticipation. Independent claim 67 recites, in part, "receiving feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party." Independent claims 77 and 87 recite similar features. As conceded by the Examiner, however, Harada does not disclose "receiving feedback from the party." Office Action, Page 8, Lines 2-18 ("Harada does not specifically disclose and teach . . . receiving feedback from the party" such as "authorization" or a "recommendation for purchase," for example, when "the consumer and party are different entities.").

Accordingly, Harada does not anticipate independent claims 67, 77, and 87, or the claims that depend from them. For at least the foregoing reasons, Applicant submits that Harada does not anticipate Applicant's claims and respectfully requests that these rejections be withdrawn.

#### Rejections Under 35 USC 103

The Examiner has rejected claims 2-4, 9, 11-18, 22-24, 29, 31-38, 42-44, 49, 51-58, 68-70, 73, 74, 76, 78-80, 83, 84, 86, 88-90, 93, 94 and 96 as obvious over Harada in view of U.S. Patent No. 6,578,072 (Watanabe). Applicant respectfully requests that these rejections be withdrawn because one of skill in the art, upon reading Harada and Watanabe, would not have been motivated to combine the teachings of these references to obtain the presently claimed items, particularly because doing so would be directly contrary to the teachings of Harada.

Independent claim 1 is directed to a method for providing a party accessing a merchant system with electronic access to an image of merchandise physically arranged according to a consumer. A consumer is provided with access to physical merchandise at a merchant's physical premises and is allowed to direct the physical arrangement of the physical merchandise at the

merchant's physical premises. An image of the physical merchandise as physically arranged at the merchant's physical premises according to the consumer is captured and loaded onto a merchant system. A device, which is physically remote from the merchant's physical premises, is provided with access to the merchant system. The party who is operating the device is enabled to access and view the captured image. Independent claims 21 and 41 recite similar features and are respectively directed to a medium and apparatus.

Independent claim 67 is directed to a method for receiving feedback from a party regarding consumer-customized nonverbal information. An electronic version of consumer-customized nonverbal information is collected at a merchant's physical premises. The electronic version of the consumer-customized nonverbal information is transmitted to a remote site for viewing by a party. Feedback is solicited and received from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party. Independent claims 77 and 87 recite similar features and are respectively directed to a medium and apparatus.

The items defined by these claims allow, for example, a third party to contribute to a consumer's shopping experience without being physically present at the merchant's physical premises. For example, an image of one or more products being worn or used by the consumer can be transmitted to a remote device where the third party is located so that the third party can see what the clothing looks like on the consumer. The third party can then contribute to the shopping experience, e.g., by providing authorization for the purchase of the product, selecting the product to be purchased, or giving the consumer feedback on the product. Thus, the consumer can be assisted by third parties during his or her shopping, without the necessity of the third parties being physically present.

Harada, on the other hand, describes a customer management system in which *only* retail store employees, *located in the store*, have access to digital photographs of the customer trying on clothes that are loaded into a customer management system. The Examiner concedes that Harada does not disclose providing access to a device remote from the merchant site, receiving feedback from a party, or, implicitly, transmitting the electronic image to a remote site. Office

Action, Page 8, Lines 2-18 (“Harada does not specifically disclose and teach a method, wherein the device is physically remote from the merchant’s physical premises” or “receiving feedback from the party”). The Examiner instead relies on Watanabe for these features, contending that one of skill in the art would have been motivated to incorporate these features into Harada to allow the consumer, as well as others outside of the store, to view the captured image. Office Action, Page 12, Lines 17-18. Applicant disagrees.

Allowing the customer and others to view the image stored in the data storage section 22 of the merchant system is directly contrary to the teachings of Harada. Harada specifically seeks to *prevent* the customer from knowing about or viewing the digital photographs showing the customer trying on clothes that are electronically stored in data section 22 of the customer management system. For instance, in all of the usage scenarios described by Harada, except one, the electronic image in the digital camera is not downloaded to the customer management system until “*after the customer leaves the shop.*” Harada, Col. 9, Line 11-12; Col. 9, Line 55-56; Col. 10, Line 28-29. Thus, the customer is specifically prevented from viewing the photograph stored in data storage section 22, or even of knowing about its existence.

The one exception to this is when the customer is coming to the store to decide on some custom made clothing. The employee photographs the customer, *but not any merchandise*. That is, the picture is simply of the customer, not the customer trying on clothing. Harada, Col. 10, Line 53-62. This image of the customer is combined with some computerized images to show the customer what he or she would look like wearing differently designed clothing. Even in this scenario, Harada indicates that it is desirable to prevent the customer from knowing that previous images of the customer trying on clothing has been stored in the customer management system: “As the customer is shown only the image of the customer photographed in the step S126, therefore, *the customer cannot know that the images photographed at other timings are utilized in customer management.*” Harada, Col. 10, Lines 62-65 (emphasis added).

From this, it is clear that Harada actually teaches away from any modification of the customer management system that allows the customer, as well as others outside the store, to view the images stored in the customer management system. Moreover, even assuming


arguendo that Watanabe discloses providing access to a device remote from the merchant site, receiving feedback from a party, or transmitting the electronic image to a remote site, a combination of Harada with Watanabe to achieve a system in which the customer, as well as others outside the store, are capable of viewing the stored images is improper, as it is inconsistent with the teachings of Harada against the customer knowing that the photograph is stored in the customer management system.

Again, Harada is completely focused on customer service, and, as part of that, on allowing *only the store employees* to have access to the photographs of the customer trying on clothes stored in the customer management system. Harada specifically teaches techniques for keeping these stored photographs a secret from the customer. Incorporating features that allow the customer, as well as others, to view the stored electronic images of the customer trying on clothes would destroy this secrecy and, therefore, would be contrary to the teachings of Harada. Thus, one of skill in the art, reading Harada and Watanabe, would not have been motivated to incorporate the aspects of Watanabe suggested by the Examiner because it would defeat the purposes and goals of Harada, and is directly contrary to the teachings of Harada.

Enclosed is a \$220 check for the Notice of Appeal fee and for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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